



July 28, 2004

Mr. Edmond Thomas
Chief
Office of Engineering and Technology
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

RE: In the Matter of New Part 4 of the Commission's Rules Concerning Disruptions to Communications – ET Docket No. 04-35

Mr. Thomas:

The Telecommunications Industry Association submits this written *ex parte* communication pursuant to Section 1.1206 of the Commission's rules and paragraph 62 of the Notice of Proposed Rulemaking in the above-captioned proceeding.¹ TIA, which represents 700 manufacturers and suppliers of communications equipment, products and services used in global communications networks, writes to express concern with several aspects of the *NPRM* and to support corresponding recommendations that have been entered into the record by members of the association and others.

Any Network Outage Reporting Requirements Should Apply Only to Service Providers

TIA is sympathetic to the Commission's fundamental desire to contribute to increasing network security and reliability, and its concerns regarding homeland security. Having said that, TIA has reservations about Commission proposals in this proceeding to modify the network outage reporting requirements and to extend them to areas not currently subject to these rules, including wireless, cable telephony, and satellite communications networks. As Lucent Technologies succinctly observed, "mandatory FCC network outage reporting requirements are likely to be less effective and more cumbersome than" industry programs.² Industry-led efforts afford the best opportunity to address public interest concerns in a manner that is more efficient and generally effective than regulation and avoids unintentionally harming innovation.

Moreover, TIA believes that concerns regarding harmful disclosures of sensitive information are real and need thoughtful and considered analysis.³ As a result, the

¹ *New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, Notice of Proposed Rulemaking, FCC 04-30 (released Feb. 23, 2004) ("NPRM").

² Comments of Lucent Technologies (filed May 25, 2004).

³ See, e.g., Reply Comments of the Department of Homeland Security (filed June 29, 2004).

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Commission should not rush to implement this system without a thorough examination of all potential implications. The risks are very real and the consequences would be devastating should ill-intentioned operatives obtain critical infrastructure information.

Should the Commission in any event adopt its proposal to expand its reporting requirements, TIA urges the FCC to abandon the notion of extending the requirement to “non-affiliated entities that maintain or provide communications systems or services used by the provider in offering such communications.”⁴ Such a proposal is rife with vagueness, legally unjustified, and, most importantly, bound to result in less accurate and reliable information submissions.⁵

Contracts between network operators and equipment suppliers in many instances include provisions for continued maintenance by the vendor and sometimes for the vendor to provide services such as network management. In all cases, however, only the service providers – the network operators – are in a position to provide full and complete information about the operations of their networks, which typically make use of equipment provided by multiple vendors.⁶ Moreover, the Commission has a long-standing policy that licensed service providers remain responsible for compliance with its rules, backed by enforcement authority grounded in its authorizing statute, the Communications Act.⁷ Network equipment suppliers, of course, will cooperate fully with service providers to provide the necessary information regarding their equipment for numerous reasons, including customer-supplier relationships, their familiarity with their own equipment and the likelihood that service agreements or other contracts are in place.⁸

TIA therefore agrees that the final language in the proposed rule Section 4.3(b) should *not* include reference to “non-affiliated entities that maintain or provide communications systems or services used by the provider in offering such communications.”

Any Reporting Template Should Not Include a Field for Listing Failed Equipment

Appendix B of the *NPRM* includes a space for “Name and Type of Equipment that failed.” TIA believes it is a critical mistake to include such a field on any form that must be submitted because it automatically creates an implication that equipment failure was a cause of the network outage, and that specific equipment will be identifiable. A network of course can fail without a causal link to specific equipment; yet it will be impossible to fully exonerate the equipment and vendor after the fact, leading to unfair and undeserved damage to the equipment supplier’s business reputation.⁹

⁴ *NPRM* at Appendix A.

⁵ See, e.g., Comments of Ericsson Inc. (filed May 25, 2004) at 2-5; Reply Comments of Nokia Inc. (filed June 24, 2004) at 3-4; written *ex parte* presentation from Alcatel to Mr. Ed Thomas, Chief, OET (filed July 22) at 2-4.

⁶ See, e.g., Comments of Ericsson Inc. at 3.

⁷ *Id.* at 4-5. See also Comments of Kansas Corporation Commission Staff at 4.

⁸ See Reply Comments of Nokia Inc. at 3; Comments of Ericsson Inc. at 3 fn. 5.

⁹ See Comments of Alcatel at 4.

Requiring or even suggesting identification of failed equipment is complicated by service provider-vendor contractual relationships and the Commission should not create a forum to air any legal disputes that could arise.¹⁰ The service provider likely would report information in an over-inclusive fashion in order to ensure compliance with the Commission rules and to protect its legal interests. The manufacturer would not have a meaningful opportunity to respond and would be at a disadvantage in defending itself.

Accordingly, TIA strongly supports the position that the standardized reporting forms not include a field for listing “equipment that failed.” As Alcatel observes, the service provider can fully explain its views as to why the network failure occurred and the contribution, if any, of specific equipment to that failure.¹¹ At a minimum, the service provider should be asked to identify equipment only when and if it is found to have contributed to the occurrence of the outage.¹²

Thank you for considering the views of TIA.

Respectfully Submitted,

A handwritten signature in cursive script, reading "Matthew J. Flanigan".

Matthew J. Flanigan
President

cc: Jim Schlichting
Jeff Goldthorp
Kent Nilsson
Bryan Tramont
Sheryl Wilkerson
Paul Margie
Jennifer Manner
Sam Feder
Barry Ohlson

¹⁰ See Comments of Alcatel at 4.

¹¹ *Id.*

¹² Comments of Ericsson Inc. at 5-7; Comments of Nokia Inc. at 4-5.